

EXHIBIT A

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 8 for himself and all others similarly situated

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 RICHARD A. WEINSTEIN on behalf of
 himself and all others similarly situated,

13 Plaintiff,

14 v.

15 SATURN CORPORATION, EAST BAY
 16 AUTO GROUP INC. dba SATURN OF
 17 OAKLAND, and DOES 1 - 100, inclusive,
 18 Defendants.

) Case No. 07-CV-00348-MMC

) **THIRD AMENDED COMPLAINT FOR:**

-) **1. VIOLATION OF CALIFORNIA'S**
) **CONSUMER LEGAL REMEDIES**
) **ACT**
) **2. VIOLATION OF THE UNFAIR**
) **COMPETITION LAWS**
) **3. VIOLATION OF THE FALSE**
) **ADVERTISING LAWS**
) **4. BREACH OF IMPLIED**
) **WARRANTY**

) DEMAND FOR JURY TRIAL

) CLASS ACTION

21
 22 COMES NOW PLAINTIFF RICHARD A. WEINSTEIN, on behalf of himself and all
 23 others similarly situated, and brings this action against Defendants Saturn Corporation, Saturn of
 24 Oakland, and Does 1 - 100 inclusive, and alleges on information and belief (except for those
 25 allegations pertaining directly to Plaintiff himself) as follows:

26 **PARTIES**

27 1. Plaintiff Richard A. Weinstein ("Plaintiff") is an individual residing at all times
 28 mentioned herein in the County of Alameda, State of California.

8. This action arose in the County of Alameda. Pursuant to Local Rule 3-2(d), assignment is proper in the San Francisco division of this Court.

INTRODUCTION

9. This action concerns the purchase by Plaintiff of a 2006 Saturn VUE ("VUE") which was described, advertised, and promoted as featuring the OnStar system, a material part of which included the ability to place and receive telephone calls. Unbeknownst to Plaintiff and the putative class, the OnStar system's telephone calling component is incapable of performing one of the normal functions expected of a telephone, namely, the ability to navigate the now ubiquitous automated phone systems which require the entry of touch-tones to navigate through a series of menus, reach a specific extension, or even just attempt to speak to a live human being. At all times prior to the sale of the VUE to Plaintiff, and contrary to the reasonable expectations of Plaintiff and the putative class that Defendants' calling system would have at least the same functionality as a normal telephone or cellular telephone, Defendants, and each of them, never informed Plaintiff and the putative class that the OnStar system in the VUE was incapable, once a call was placed, from allowing the user to transmit the touch-tones that would allow for the navigation of automated phone systems. Plaintiff requests injunctive relief, restitution and damages, on behalf of himself and all others similarly situated.

GENERAL ALLEGATIONS

10. On September 19, 2006, Plaintiff purchased a 2006 Saturn VUE ("the VUE") from Saturn of Oakland, located at 2401 Broadway, Oakland, California, 94612.

11. The VUE was manufactured by Saturn and, Plaintiff is informed and believes, Saturn provided the VUE to Saturn retailers, along with all marketing materials concerning the VUE, training regarding the features of the OnStar system, a 2006 Saturn VUE Owner's Manual, OnStar Owner's Guide and an OnStar Compact Disc.

AGENCY

12. Plaintiff is informed and believes that Saturn of Oakland and other Saturn retail locations, vis-a-vis Plaintiff and the putative class, acted as the agents of Saturn in making statements regarding the features of the VUE and were, at all times relevant herein, authorized to make statements to consumers, including Plaintiff, regarding the features of the VUE in

1 connection with the sale of the VUE to Plaintiff and members of the general public. Plaintiff's
2 information and belief is a result of the following series of facts:

3 a) Saturn of Oakland as well as other Saturn retail locations exclusively sell
4 Saturn vehicles;

5 b) The Saturn name and Saturn logo, without any "of Oakland" terminology
6 was prominently displayed throughout the Saturn of Oakland retail location;

7 c) Similarly, the Saturn name and Saturn logo, without any additional
8 qualifying terminology, is prominently displayed throughout other Saturn retail locations;

9 d) Saturn advertising refers to their sales locations as "retailers" and "retail
10 facilities" rather than "dealers" and "dealerships," intentionally setting their sales
11 locations apart, in the minds of consumers, from other car dealerships;

12 e) Saturn advertises "no haggle" pricing at all of their retail locations, leading
13 consumers to believe such policy and pricing is set by Saturn and not the individual
14 retailer;

15 f) The Saturn Franchise Offering Circular dated March 30, 2006 ("Circular"),
16 which includes a standard franchise agreement, specifically states "Owners and users of
17 motor vehicles may reasonably expect that the vehicles you sell, and the parts, accessories,
18 and service contracts you sell or use in servicing vehicles, are marketed by us [Saturn] or
19 the Parent [General Motors]";

20 g) According to the Circular, to be selected as a Saturn dealer, there is a
21 detailed "Selection Process." An applicant must be fully committed (in the opinion of
22 Saturn) to the "Saturn Mission," "Saturn Philosophy" and "Saturn Values." (Doc. 18-3 p. 9)

23 h) According to the Circular, Saturn approves and specifies the dealer's
24 location and marketing area. (Doc. 18-3 p. 11)

25 i) According to the Circular, Saturn requires that the retail operation be
26 managed by the individual who is the named franchise operator. (Doc. 18-3 p. 13)

27 j) According to the Circular, Saturn provides a mandatory design package for
28 the interior and exterior of the retail facility. (Doc. 18-3 p. 19-22)

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1 k) According to the Circular, Saturn requires three types of training for
 2 retailers, "Technical," "Non-Technical" and "Continuous Learning Seminars." (Doc. 18-3,
 3 p. 24) There are numerous required training courses including one called "*OnStar: What's*
 4 *behind the Buttons.*" (Doc. 18-5, pp. 1-3, emphasis added)

5 l) According to the Circular, Saturn requires retailers to install a computer
 6 network with hardware and software conforming to its specifications, permitting the
 7 transfer of information between the retailer and Saturn, including a requirement that Saturn
 8 have immediate on-line access to all of the retailer's financial accounts and records. (Doc.
 9 18-3 p. 26)

10 m) According to the Circular, Saturn requires retailers to purchase Sales and
 11 Service Operating Systems to develop and implement sales and service in the retailer's
 12 marketing area. "These systems include the Modules and other materials and programs
 13 that promote consistent and competitive display, sales, and service of the products, such as
 14 *merchandising materials, product displays, and technical product support materials.*"
 15 (Doc. 18-4 p. 1-2, emphasis added);

16 n) According to the Circular, Saturn requires retailers "to purchase, maintain
 17 and use only signs approved by the Franchiser as designated in the Retail Facilities Guide
 18 and the Critical Image Elements Guide, and to make and pay for any changes in signage
 19 approved by the FOT." (Doc. 18-7 p. 22);

20 o) According to the Circular, Saturn requires its retailer to agree that they "will
 21 conduct Retail Facility Operation . . . utilizing . . . the Saturn Consultative Sales Process"
 22 which is defined as "the seven-step process that delivers a sales experience focused on the
 23 wants and needs of the customer. It includes reception, interview, selective presentation,
 24 walkaround demonstration, purchase consultation, delivery and follow-up." (Doc. 18-7 p.
 25 24; Doc. 18-8 p. 47).

26 p) According to the Circular, Saturn provides indemnification to its retailers,
 27 including Saturn of Oakland, for a "Failure of a Product to conform to the description *set*
 28 *forth in advertisements or product brochures distributed by Saturn,* because of changes in

1 either standard equipment or material component parts, *unless the Retailer received*
2 *notification of the changes* prior to retail delivery of the affected Product by Retailer.”
3 (Doc. 18-8 p. 40, emphasis added.);

4 q) When Plaintiff contacted Saturn of Oakland after the purchase of his vehicle
5 to request help in accessing automated phone systems through OnStar, the sales associate
6 he purchased the vehicle from, Darin Cross, informed him that, coincidentally, a
7 manufacturer’s representative was conducting OnStar training for the retailer’s sales staff
8 on-site, and that he would ask the representative. Mr. Cross then phoned back the Plaintiff
9 and informed him that the OnStar trainer has told him that Mr. Cross should read the
10 manual, and that the “Mute” button was to be used to access the automated phone system
11 navigation feature. Thus, even the manufacturer’s own trainer for the OnStar system did
12 not know that the VUE did not have this functionality, and apparently conveyed to retailers
13 the incorrect information that the VUE did, in fact, have this functionality as part of the
14 training process;

15 r) When Plaintiff took his car in to be “fixed” at the request of the Saturn of
16 Oakland service manager, the service manager called Plaintiff on the afternoon of that day
17 and informed him that it was only after speaking with various individuals at Saturn and
18 OnStar was he able to determine that the VUE did not, in fact, have the automated phone
19 system navigation feature.

20 KNOWLEDGE

21 13. For the above stated reasons, Plaintiff is also informed and believes that at all times
22 relevant herein, Saturn knew consumers, such as Plaintiff and members of the putative class,
23 would rely upon the knowledge and representations and/or omissions of Saturn retailers, such as
24 Saturn of Oakland and Saturn’s marketing materials, to advise them as to the features of Saturn’s
25 products, including the VUE, that Defendant failed to accurately inform such Saturn retailers that
26 the VUE did not, in fact, have the automated phone system navigation feature, and Plaintiff did, in
27 fact, rely upon the knowledge and representations and/or omissions of Saturn of Oakland and
28 Saturn’s marketing materials in learning about the features of the VUE.

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1 the steering-wheel controls, which shows the button used for voice-activated vehicle features.

2 Both of these features are described by the brochure as being "standard" with all VUE vehicles.

3 17. In a brochure specifically advertising the OnStar system, which, upon information
4 and belief, was distributed by Defendant Saturn to its retailers during the relevant time period, and
5 containing the statement "ONS-BROUPDATE-JUNE06," an entire panel is devoted to "OnStar
6 Hands-Free Calling." The brochure identifies, in a chart, that part of the "Safe & Sound Service
7 Plan" includes the service "Hands-Free Calling [which] [a]llows you to make and receive voice-
8 activated phone calls in your vehicle" and identifies the Saturn VUE as one of cars in a list under
9 the heading "ONSTAR IS AVAILABLE FACTORY-INSTALLED IN THESE 2006/2007

10 MODELS." The brochure further states, in relevant part, "Make and receive calls from your
11 OnStar-equipped vehicle;" "OnStar-equipped vehicles give you access to built-in, voice-activated
12 hands-free calling and an opportunity to try it out at no charge;" "A safe and reliable way to make
13 and receive calls in your vehicle. Call at the touch a single button with no cell phone to hold or
14 dial;" and "New! Ask about our Shared Minutes Plan, and share your cell phone minutes with
15 your vehicle for great savings."

16 18. An ordinary cellular telephone, including those hands-free kits built-in to other
17 brands of cars, after-market hands-free car kits, and any modern telephone of whatever kind,
18 allows for the transmission of Dual-Tone Multi-Frequency ("DTMF") signaling, commonly
19 known as "Touch-Tones," standardized by ITU-T Recommendation Q.23.

20 19. Once a call is placed, however, the OnStar system contained in the VUE provides
21 no method for the transmission of Touch-Tones.

22 20. The lack of ability of the OnStar system to transmit Touch-Tones once a call is
23 placed renders the OnStar system incapable of performing an essential modern function of an
24 ordinary telephone, namely, the ability to navigate automated phone systems. To be clear, not
25 only does the OnStar system in the VUE not provide the ability to navigate automated phone
26 systems "hands-free," it provides *no* ability to navigate automated phone systems *at all*.

27 21. A reasonable consumer, unless specifically informed of the fact that the OnStar
28 system is incapable of providing all the features of an in-car cellular telephone, would reasonably

1 assume that it was capable of the full functionality of a normal telephone, including the ability to
2 navigate automated phone systems.

3 22. Defendants, and each of them, failed to specifically disclose, in both written and
4 oral communications, that the OnStar system provided in the VUE lacks, as part of its
5 functionality, the ability to dial extension numbers and navigate automated phone systems. This is
6 a standard feature available in ordinary cellular phones, other non-Saturn vehicles with built-in
7 cellular phones or cellular phone kits, after-market hands-free car kits for cellular telephones, and
8 available in other vehicles with the OnStar system.

9 23. At least one version of the OnStar Owners Guide, provided to consumers in 2006,
10 further provides on page 4:

11 White-Dot Button – Press this button to end any call or to
12 place and receive calls with OnStar Personal Calling, a
13 hands-free, voice-activated phone that is fully integrated into
14 your vehicle.

15 24. In describing OnStar Personal Calling, the same version of the OnStar Owners
16 Guide states:

17 OnStar Personal Calling (OPC) operates with the touch of a
18 button and a few simple voice commands. . . . Whether you
19 are placing or receiving a call, *once you press the white-dot*
20 *button, you don't have to take your hands off the wheel or*
21 *your eyes off the road.*

22 (P.16, emphasis added). There is no disclaimer in this section that certain vehicles do not
23 have the ability to navigate automated phone systems using OnStar Personal Calling.

24 25. Consistent with this messaging, Defendants further specifically represented to
25 Plaintiff, through Saturn of Oakland, that the VUE's OnStar system was fully functional as a
26 cellular telephone replacement and, specifically, that it worked to navigate automated phone
27 systems. The representation was made on or about September 19, 2006, at Saturn of Oakland, by
28 a sales representative by the name of Darin Cross and was made to Plaintiff Richard A. Weinstein.

1 Mr. Cross specifically represented to Plaintiff that the VUE's OnStar "Hands-Free Calling"
2 system worked with automated phone systems to allow Plaintiff to navigate those systems "hands-
3 free." Prior to the purchase of Plaintiff's VUE, neither Mr. Cross, nor any other employee of
4 Saturn or Saturn of Oakland advised Plaintiff, in either written or oral materials, that the system
5 installed in the VUE lacked the ability to navigate automated phone systems.

6 26. Following the purchase of the VUE, Plaintiff contacted Mr. Cross at Saturn of
7 Oakland because he was unable to navigate automated phone systems using the OnStar system on
8 the VUE. Mr. Cross informed Plaintiff that, coincidentally, a corporate representative was
9 conducting OnStar training at Saturn of Oakland, and Mr. Cross would ask the representative and
10 get back to Mr. Weinstein. Mr. Cross called Mr. Weinstein back and told Mr. Weinstein that Mr.
11 Cross was told by the representative that Mr. Weinstein should consult the OnStar User Guide
12 which would describe how to navigate automated phone systems, that there was also a CD that
13 Mr. Weinstein could listen to if he had problems, but that generally, Mr. Weinstein needed to use
14 the "mute" button on his car in order to use this feature. He was told to consult the manual for a
15 description of how to do so. Even at this stage, Plaintiff was not informed that the VUE did not,
16 in fact, have the ability to navigate automated phone systems.

17 27. The VUE was sold to Plaintiff with the "2006 Saturn VUE Owner's Manual"
18 ("Manual"). On page 2-33 of the Manual, OnStar Hands-Free Calling is listed as a feature of the
19 Safe and Sound Plan of the OnStar system. The Manual states "Hands-Free calling is fully
20 integrated into the vehicle" and refers the reader to the OnStar Owner's Guide ("Guide") "to find
21 out more."

22 28. Nowhere in the Manual, the Guide, or any other information provided to Plaintiff,
23 is there any disclaimer that the OnStar system is incapable of navigating automated phone systems
24 *at all*. Further, nowhere in the Manual, the Guide, or any other information provided to Plaintiff,
25 is there a list of vehicles which specifically do or do not have the ability to access automated
26 phone systems.

27 29. The VUE was also accompanied by a compact disc manual. Track 8 of the disc is
28 entitled "Dialing Numbers for Extensions or Voice Mail." Nowhere on or in this compact disc or

1 its packaging is there any disclaimer that the OnStar system is incapable of navigating automated
2 phone systems at all, nor is there a list of vehicles which do or do not have the ability to access
3 automated phone systems.

4 30. Nowhere in the Manual, the Guide, or any other information provided to Plaintiff is
5 there any disclaimer that states that the VUE does not have the ability to navigate automated
6 phone systems *at all*.

7 31. When Plaintiff still could not navigate automated phone systems with the OnStar
8 system using the "mute" button, he contacted Saturn of Oakland again. The service manager at
9 Saturn of Oakland told him that it was probably a "software problem" and to bring the car in for
10 repair, which Plaintiff did. Later that day, the service manager called Plaintiff and informed him
11 that after he, and his general manager, had spoken to corporate representatives at Saturn and
12 OnStar, they had discovered, for the first time, that the ability to navigate automated phone
13 systems was not available on the VUE.

14 32. Plaintiff is informed and believes that at all times prior to this service call, Saturn
15 of Oakland (including the aforementioned sales representative and service manager) believed and
16 told Plaintiff that the OnStar system in the VUE was fully functional and had the ability to
17 navigate automated phone systems.

18 33. Plaintiff is informed and believes that the source of Saturn of Oakland's belief and
19 representations as to the features of the VUE was solely as a result of information obtained or
20 failed to be obtained from Defendant Saturn. Plaintiff's information and belief is based on the
21 facts listed above in Paragraph 10 and incorporated by reference herein and the following
22 additional facts:

23 a) As part of the franchise agreement, Saturn requires all employees of its
24 retailers to undergo a detailed training program. The agreement specifically provides that:

25 "The training of all Retailer team members is critical ... The Retailer
26 therefore agrees that all team members will participate in both the
27 initial and ongoing training programs identified in the Saturn Retail
28 Training Catalogue of Programs and Services, and any others

1 approved by the FOT¹, within the time frames specified.

2 (Doc. 18-7, p. 33)

3 One of the "required training courses" for New Vehicle Sales Managers and Sales
4 Consultants is a course called "OnStar: What's Behind the Buttons." (Doc. 18-5, p. 2).

5 b) When Plaintiff called Mr. Cross due to his inability to navigate automated
6 voice systems "hands-free," Mr. Cross contacted a corporate representative in order to
7 provide Plaintiff with assistance;

8 c) When Plaintiff contacted the service manager due to his inability to
9 navigate automated voice systems, the service manager was unable to determine that the
10 VUE did not have this feature until the service manager or another Saturn of Oakland
11 employee contacted the manufacturer;

12 d) No other source of information other than the manufacturer has been
13 consulted by Saturn of Oakland with regard to its information about detailed features of the
14 VUE, including whether or not it has the ability to navigate automated voice systems
15 "hands-free."

16 34. The Hands-Free Calling feature is of particular importance to consumers because
17 of increasing national public awareness of the dangers of using wireless phones while driving,
18 unless the driver is using a hands-free device. For example, on September 15, 2006, Governor
19 Schwarzenegger signed Senate Bill 1613 prohibiting the use of cell phones by drivers unless the
20 driver is using a hands-free device, starting July 1, 2008. The failure of the OnStar system on the
21 VUE to dial extension numbers and navigate automated phone systems makes it unfit for the
22 purpose for which it was sold, i.e. to permit it to be used as a replacement cellular telephone,
23 because a user encountering an automated phone system could not complete his or her call using
24 the system. The ability of the VUE to provide a built-in cellular phone replacement with hands-
25 free capabilities was a fact material to consumers' consideration of the VUE for purchase, as
26 evidenced by Defendants' advertising. The inability of the VUE to navigate automated phone
27

28 ¹"Franchise Operating Team"

1 systems is a fact material to a consumer's consideration of the VUE for purchase. Defendant
2 Saturn knew the VUE did not have the ability to navigate automated phone systems and failed to
3 disclose that fact to Plaintiff and consumers prior to their purchase of their vehicles.

4 35. Because of the importance of Hands-Free Calling to promote safety and to comply
5 with the law, as effective July 1, 2008, and because consumers such as Plaintiff would reasonably
6 believe that a built-in cellular telephone replacement would permit them to navigate automated
7 phone systems, and because the VUE was sold with detailed instructions as to how to navigate
8 automated phone systems, and because Saturn retailers, such as Saturn of Oakland, apparently
9 *themselves* believed the VUE had the ability to navigate automated phone systems, and because
10 Saturn knew its retailers would either represent the VUE had this feature or would omit to disclose
11 that the feature was not present in the VUE, and because Saturn knew consumers such as Plaintiff
12 would reasonably rely upon the representations and/or omissions of retailers such as Saturn of
13 Oakland, Saturn had a *duty* to disclose to Plaintiff and other purchasers of the VUE that the VUE
14 *did not* have that important feature. Defendant Saturn, however, failed to disclose this material
15 fact both to its retailers and to end purchasers.

16 36. The duty owed by Saturn to Plaintiffs and all others similarly situated, is to
17 accurately represent, through its advertising and retail network, the specific inability of the VUE
18 to navigate automated phone systems. This duty stems from its responsibility, which it voluntarily
19 assumed, to advertise the vehicle for sale with the OnStar system, to advertise and promote the
20 existence of cellular replacement hands-free voice-activated calling in its vehicles under the
21 slogan "keep your hands on the wheel and your eyes on the road," to insist on providing a
22 comprehensive and mandatory training program for its retailers' employees, which specifically
23 included a course on the OnStar system, to insist on sole rights to create and approve marketing
24 materials for Saturn products, and Saturn's knowledge that its retailers' employees would transmit
25 to Plaintiff and consumers the information regarding the ability or inability of specific vehicles to
26 navigate automated phone systems using the OnStar Hands-Free service.

27 37. According to Defendant Saturn's representation, the ability to navigate automated
28 phone systems could be included in the VUE for a minimal cost of \$60.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action pursuant to the class action provision of the California *Consumers Legal Remedies Act* (“CLRA”) on behalf of himself and a class of all others similarly situated within the United States of America (“the CLRA Class”) described as follows:

As against Defendant Saturn, every consumer who purchased a Saturn VUE, from Saturn or at one its retailers, in the United States from the date that the Saturn VUE was first manufactured to the present, that contained an OnStar system in which the Hands-Free Calling feature lacks the ability to dial extension numbers and navigate automated phone systems. Excluded from the CLRA Class are Defendants, Defendants' officers, directors and employees, attorneys, and any entity in which Defendants have a controlling interest. Also excluded are any judge, justice or judicial officer presiding over this matter, their judicial staff and the immediate families thereof;

Or in the alternative,

If a nationwide class is unavailable under the law, an identical class consisting only of those consumers who purchased a VUE in California;

And

A sub-class of consumers of either a Nationwide or California class, as against Defendant Saturn of Oakland, which consists of those consumers meeting the definition of the primary class, who purchased their vehicle at Saturn of Oakland.

1 40. It is impractical to bring all members of the CLRA Class before this Court.

2 41. The questions of law or fact common to the CLRA Class are substantially similar
3 and predominate over the questions affecting individual members.

4 42. The claims of Plaintiff are typical of the claims of the CLRA Class.

5 43. Plaintiff will fairly and adequately protect the interests of the CLRA Class.

6 **UCL/FAL CLASS**

7 44. Plaintiff also brings this action pursuant to the California *Business and Professions*
8 *Code* §§ 17200 *et seq.* ("UCL") and 17500 *et seq.* ("FAL"), *Code of Civil Procedure* § 382, and
9 the Federal Rules of Civil Procedure, on behalf of himself and a class of all others similarly
10 situated within the United States of America ("the UCL/FAL Class") described as follows:

11 As against Defendant Saturn, every consumer who purchased a
12 Saturn VUE, from Saturn or at one its retailers, in the United States
13 from the date that the Saturn VUE was first manufactured to the
14 present, that contained an OnStar system in which the Hands-Free
15 Calling feature lacks the ability to dial extension numbers and
16 navigate automated phone systems. Excluded from the UCL/FAL
17 Class are Defendants, Defendants' officers, directors and
18 employees, attorneys, and any entity in which Defendants have a
19 controlling interest. Also excluded are any judge, justice or judicial
20 officer presiding over this matter, their judicial staff and the
21 immediate families thereof;

22 Or in the alternative,

23 If a nationwide class is unavailable under the law, an identical class consisting
24 only of those consumers who are citizens of California and/or who purchased a
25 VUE in California or from a California entity;

26 And

27 A sub-class of consumers of either a Nationwide or California class,
28 as against Defendant Saturn of Oakland, which consists of those

1 consumers meeting the definition of the primary class, who
2 purchased their vehicle at Saturn of Oakland.

3 45. The UCL/FAL Class is so numerous that individual joinder of all members of the
4 Class is impractical. While the exact number of class members is unknown to Plaintiff at this time
5 and can only be ascertained through discovery, Plaintiff believes there are at least thousands of
6 members of the proposed class.

7 46. There is a well defined community of interest among the members of the proposed
8 UCL/FAL Class. Plaintiff, like other members of the class, purchased the VUE which contained
9 an OnStar system in which the Hands-Free Calling feature lacks the ability to dial extension
10 numbers and navigate automated phone systems. The factual basis of Defendants' misconduct are
11 common to all members of the class and represent a common practice of wrongful conduct
12 resulting in damages to all members of the class.

13 47. There are numerous questions of law and fact common to Plaintiff and the
14 members of the UCL/FAL Class and those questions predominate over any questions that affect
15 individual members of the class. These common questions include (but are not necessarily limited
16 to):

- 17 a) Whether all VUEs which contained an OnStar system with a Hands-Free
18 Calling feature lacked the ability to dial extension numbers and navigate automated
19 phone systems.
20 b) Whether Defendants' conduct violates the CLRA or other laws;
21 c) Whether Defendants' conduct is "unfair" under Section 17200;
22 d) Whether Defendants' conduct is "fraudulent" under Section 17200;
23 e) Whether Defendants' advertising is misleading;
24 f) Whether Plaintiff and members of the class have sustained damages;
25 g) The amount of damages sustained by Plaintiff and members of the class;
26 h) Whether injunctive relief is necessary and/or appropriate; and
27 i) Whether other remedies are available to Plaintiff and members of the class.
28

1 48. Plaintiff's claims are typical of the claims of the other members of the UCL/FAL
2 Class. Plaintiff and all other members of the class have suffered injury in fact and lost money or
3 property as a result of the unfair competition and/or false advertising alleged herein. Plaintiff will
4 fairly and adequately represent and protect the interests of the UCL/FAL Class. Plaintiff has
5 retained counsel with substantial experience in prosecuting consumer class actions. Plaintiff and
6 his counsel are committed to vigorously prosecute this action on behalf of the class and have the
7 financial resources necessary to do so. Neither Plaintiff nor his counsel have any interest adverse
8 to those of the class.

9 49. A class action is superior to all other methods for the fair and efficient adjudication
10 of this controversy since individual joinder of all members of the class is impractical.
11 Furthermore, as the damages suffered by each individual member of the class may be relatively
12 small, the expense and burden of individual litigation would make it difficult to impossible for
13 individual members of the class to redress the wrongs done to them. The cost to the court system
14 of such individual adjudication would be substantial. Individual litigation would also present the
15 potential for inconsistent or contradictory judgments and would magnify the delay and expense to
16 all parties and the court system in multiple trials of identical factual issues. By contrast, the
17 conduct of this action as a class action presents fewer management difficulties, manages the
18 resources of the parties and the court system and protects the rights of each class member.

19 **BREACH OF IMPLIED WARRANTY CLASS**

20 50. Plaintiff also brings this action under a claim for a breach of implied warranty on
21 behalf of himself and a class of all others similarly situated within the United States of America
22 ("the Warranty Class") described as follows:

23 As against Defendant Saturn, every consumer who purchased a
24 Saturn VUE, from Saturn or at one its retailers, in the United States
25 from the date that the Saturn VUE was first manufactured to the
26 present, that contained an OnStar system in which the Hands-Free
27 Calling feature lacks the ability to dial extension numbers and
28 navigate automated phone systems. Excluded from the Warranty

1 Class are Defendants, Defendants' officers, directors and
 2 employees, attorneys, and any entity in which Defendants have a
 3 controlling interest. Also excluded are any judge, justice or judicial
 4 officer presiding over this matter, their judicial staff and the
 5 immediate families thereof;

6 Or in the alternative,

7 If a nationwide class is unavailable under the law, an identical class consisting
 8 only of those consumers who are citizens of California and/or purchased a VUE in
 9 California or from a California entity;

10 And

11 A sub-class of consumers of either a Nationwide or California class,
 12 as against Defendant Saturn of Oakland, which consists of those
 13 consumers meeting the definition of the primary class, who
 14 purchased their vehicle at Saturn of Oakland.

15 51. The Warranty Class is appropriate for certification for all the same reasons noted in
 16 paragraphs 45 through 49 above as well as the existence of other common questions of law and
 17 fact specifically related to the Warranty Class. These common questions include (but are not
 18 necessarily limited to):

- 19 a) Whether all VUEs which contained an OnStar system which lacked the
 20 ability to dial extension numbers and navigate automated phone systems.
- 21 b) Whether the OnStar system constitutes a part of the VUE for which an
 22 implied warranty was applicable;
- 23 c) Whether one of the ordinary purposes for which the OnStar system was sold
 24 was the ability to use it as a telephone;
- 25 d) Whether one of the ordinary purposes of a telephone is allowing the user to
 26 navigate automated phone systems;
- 27 e) Whether the OnStar system failed to perform this ordinary purpose;

28

- f) Whether the OnStar system was knowingly sold by Defendants for the particular purpose of providing "hands-free" "voice-activated" calling;
- g) Whether the implied warranty for a particular purpose was breached by Defendants by failing to include in the OnStar system in the VUE the ability to navigate automated phone systems "hands-free";
- h) Whether remedies for breach of warranty are available to Plaintiff and members of the class; and
- i) The nature of the remedies available to Plaintiff and members of the class.

FIRST CAUSE OF ACTION

AGAINST ALL DEFENDANTS

VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT

52. Plaintiff hereby incorporates, as if set forth in full, each and every preceding and subsequent allegation in this complaint.

53. The Defendants' acts and omissions violate the following portions of the California *Consumers Legal Remedies Act*:

- a) *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which they do not have ..."
- b) *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

54. Plaintiff and the members of the CLRA Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

55. Plaintiff filed, concurrently with the original complaint, the venue affidavit required by *Civil Code* § 1780(c). In addition, on November 24, 2006, Plaintiff provided the notice to Defendants required under *Civil Code* § 1782(a) via letter by certified mail. No appropriate correction, repair, replacement, or other remedy has been given, or has agreed to be given, to Plaintiff.

57. Plaintiff has suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770. Defendant's conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendant. In addition, Plaintiff and the class are entitled to an award of attorneys' fees and costs against Defendant pursuant to the provisions of *Civil Code* § 1780(d).

AGAINST ALL DEFENDANTS

18 58. Plaintiff hereby incorporates, as if set forth in full, each and every preceding and
19 subsequent allegation in this complaint.

60. As a direct and proximate result of Defendants' illegal business practices, Plaintiff and the members of the UCL/FAL Class have suffered injury and have lost money or property.

1 61. The illegal business practices described herein present a continuing threat to
 2 Plaintiffs, the class and members of the public in that Defendants persist and continue to engage in
 3 these practices, and will not cease doing so unless and until forced to do so by this Court.
 4 Defendants' conduct will continue to cause irreparable injury to Plaintiff and the class unless
 5 enjoined or restrained.

6 **THIRD CAUSE OF ACTION**

7 **AGAINST ALL DEFENDANTS**

8 **VIOLATION OF THE FALSE ADVERTISING LAWS**

9 62. Plaintiff hereby incorporates, as if set forth in full, each and every preceding and
 10 subsequent allegation in this complaint.

11 63. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ...
 12 corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into
 13 any obligation relating thereto, to make or disseminate or cause to be made or disseminated ...
 14 from this state before the public in any state, in any newspaper or other publication, or any
 15 advertising device, or by public outcry or proclamation, or in any other manner or means
 16 whatever, including over the Internet, any statement ... which is untrue or misleading, and which is
 17 known, or which by the exercise of reasonable care should be known, to be untrue or
 18 misleading...."

19 64. Defendants' representations that the OnStar system had the ability navigate
 20 automated phone systems and/or their failure to disclose that the OnStar system in the VUE is
 21 lacking that feature, when Defendants had a duty to so disclose as alleged above, is misleading.

22 65. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs
 23 and the members of the UCL/FAL Class have suffered injury in fact and have lost money or
 24 property.

25 66. The misleading advertising described herein presents a continuing threat to
 26 Plaintiff and the class in that Defendants persist and continue to engage in these practices, and will
 27 not cease doing so unless and until forced to do so by this Court. Defendants' conduct will
 28 continue to cause irreparable injury to Plaintiff and the class unless enjoined or restrained.

1 FOURTH CAUSE OF ACTION

2 AGAINST ALL DEFENDANTS

3 BREACH OF IMPLIED WARRANTY

4 - 67. Plaintiff hereby incorporates, as if set forth in full, each and every preceding and
5 subsequent allegation in this complaint.

6 68. Defendants impliedly warrant that the OnStar system, which is a part of the VUE,
7 is fit for the ordinary purpose for which the product is sold.

8 69. An ordinary purpose for which the OnStar system is sold is to provide the
9 purchaser with a telephone built-in to the car.

10 70. An ordinary cellular telephone, as does any modern telephone, allows for the
11 transmission of DTMF signaling, commonly known as "Touch-Tones," standardized by ITU-T
12 Recommendation Q.23.

13 71. Once a call is placed, the OnStar system contained in the VUE provides no method
14 for the transmission of Touch-Tones.

15 72. The lack of ability of the OnStar system in the VUE to transmit Touch-Tones once
16 a call is placed renders the OnStar system incapable of performing an essential modern function of
17 an ordinary telephone, namely, the ability to navigate automated phone systems, which have
18 become ubiquitous in this day and age.

19 73. The OnStar system in the VUE is not fit for one of the ordinary purposes for which
20 it is sold, namely, that of a telephone, in that the OnStar system lacks, as part of its functionality,
21 the ability to dial extension numbers and navigate automated phone systems, which is available in
22 ordinary telephones, cellular phones, other non-Saturn vehicles with built-in cellular phones or
23 built-in hands-free kits, after-market car kits, and other vehicles with the OnStar system.

24 74. Further, Defendants knew that consumers who purchased the VUE relied upon
25 Defendants' expertise and skill, judgment and knowledge in furnishing automobiles equipped with
26 "hands-free" "voice-activated" calling, so that the driver can avoid the danger of using a wireless
27 phone that requires the use of his or her hands while driving, and comply with new laws such as
28 California's Senate Bill 1613, which is effective July 1, 2008.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all causes of actions so triable.

DATED: May 25, 2007

KIRTLAND & PACKARD LLP

By: /s/
BEHRAM V. PAREKH, Of Counsel
Counsel for Plaintiff RICHARD A.
WEINSTEIN, for himself and all others
similarly situated

LAW OFFICES
KIRTLAND & PACKARD LLP

1 I, David M. Lisi, hereby declare:

2 Pursuant to General Order No. 45, § X(b), I attest under penalty of perjury that
3 concurrence in the filing of the Letter Brief from Richard A. Ripley to The Honorable Charles A.
4 Legge dated October 15, 2009 has been obtained from its signatory.

5 Dated: October 15, 2009

6 /s/ David M. Lisi
7 David M. Lisi
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